



February 2, 2017

**VIA CERTIFIED MAIL**

Associated Ready Mixed Concrete, Inc.  
Attn: Managing Agent  
100 East Redondo Beach Blvd.  
Gardena, CA 90248

Lebata, Inc.  
Attn: Managing Agent  
4621 Teller Avenue, Ste 130  
Newport Beach, CA 92660

**FEB 09 2017**

**VIA U.S. MAIL**

Kurt Caillier  
Registered agent for:  
Associated Ready Mixed Concrete, Inc.  
4621 Teller Avenue, Ste 130  
Newport Beach, CA 92660

Kurt Caillier  
Registered agent for: Lebata, Inc.  
4621 Teller Avenue, Ste 130  
Newport Beach, CA 92660

**Re: Notice of Violation and Intent to File Suit Under the Clean Water Act**

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper and Los Angeles Waterkeeper (collectively "Coastkeeper") regarding violations of the Clean Water Act<sup>1</sup> and California's Industrial Storm Water Permit<sup>2</sup> ("Storm Water Permit") occurring at: 100 East Redondo Beach Boulevard, Gardena, CA 90248 ("Associated Facility" or "Facility"). The purpose of this letter is to put Associated Ready Mixed Concrete, Inc. ("Associated") and Lebata, Inc. ("Lebata") as the owner(s) and operator(s) of the Associated Facility, on notice of the violations of the Storm Water Permit occurring at the Associated Facility, including, but not limited to, discharges of polluted storm water from the Associated Facility into local surface waters.<sup>3</sup> Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Associated and/or Lebata are liable for violations of the Storm Water Permit and the Clean Water Act.

<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

<sup>2</sup> National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ.

<sup>3</sup> Associated operates additional ready-mixed concrete facilities in Los Angeles County and Orange County. Coastkeeper is also issuing 60-day notices of violation and intent to sue letters to three of those additional facilities, as described below.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This letter is being sent to you as the responsible owner and operator of the Associated Facility or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Associated and Lebata that Coastkeeper intends to file a federal enforcement action against Associated and/or Lebata for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

## **1. BACKGROUND**

### **1.1. Orange County Coastkeeper and Los Angeles Waterkeeper**

Orange County Coastkeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Founded in 1999, Orange County Coastkeeper has approximately 2,000 members who live and/or recreate in and around the Santa Ana River watershed.

Los Angeles Waterkeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, California 90401. Founded in 1993, Waterkeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles area, including in the Dominguez watershed.

Orange County Coastkeeper and Los Angeles Waterkeeper are dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Los Angeles and Orange County watersheds. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiate enforcement actions on behalf of themselves and their members.

Members of Orange County Coastkeeper and Los Angeles Waterkeeper enjoy the waters that storm water from the Facility discharges into, including the Dominguez Channel, the Los Angeles – Long Beach Harbor, and the Pacific Ocean. Members of Los Angeles Waterkeeper and Orange County Coastkeeper use these waterways to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and/or run. Additionally, members of Los Angeles Waterkeeper and Orange County Coastkeeper use the waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The discharge of pollutants from the Facility impairs each of these uses. Further, discharges of polluted storm water and non-storm water from the Facility are ongoing and continuous. Thus, the interests of Orange County Coastkeeper and Los Angeles Waterkeeper's members have been, are being, and will continue to be adversely affected by Associated's and/or Lebata's failure to comply with the Clean Water Act and the Storm Water Permit.

### **1.2. The Owners and/or Operators of the Associated Facility**

Information available to Coastkeeper indicates that Associated Ready Mixed Concrete, Inc. is an owner and/or operator of the Associated Facility since at least 1992. Associated Ready Mixed Concrete, Inc. is an active California corporation and its registered agent is: Kurt Caillier, 4621 Teller Avenue, Suite 130, Newport Beach, CA 92660.

Information available to Coastkeeper indicates that the Associated Facility is comprised of three parcels, as detailed below. Information available to Coastkeeper indicates that these parcels are owned by Lebata, Inc. Lebata Inc., is an active California corporation and Kurt Caillier is also the registered agent.

Coastkeeper refers to Associated Ready Mixed Concrete Inc. and Lebata, Inc. collectively as the "Facility Owners and/or Operators."

The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Associated Facility into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act. Based on information and belief, Associated and/or Lebata are also the owners and/or operators of three other facilities that Coastkeeper has put on notice of similar Clean Water Act violations. One facility is located at 134 Redondo Beach Boulevard, Gardena, CA 90248, WDID# 4 19I007122. Another facility is located at 25901 Towne Centre Drive, Foothill Ranch, CA 92610, WDID# 8 30I014516. The third facility is located at 18030 Mount Washington Street, Fountain Valley, California 92708, WDID# 8 30I007107.

### **1.3. The Associated Facility's Storm Water Permit Coverage**

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding #12. The Associated Facility first obtained Storm Water Permit coverage on June 2, 1992. On May 28, 1992, the Facility Owners and/or Operators submitted an NOI ("1992 NOI"). The 1992 NOI identifies the owner/operator of the Associated Facility as "A & A Ready Mixed Concrete" and the Facility name and location as "A & A Ready Mixed Concrete, 100 E. Redondo Beach Boulevard, Gardena, CA 90248." The 1992 NOI states that the Facility is 1.0 acre and 100 percent impervious. The 1992 NOI lists the Waste Discharge Identification ("WDID") number for the Associated Facility as 4B195. On June 24, 1997, the Facility Owners and/or Operators submitted an NOI to continue coverage for the Facility under the 1997 version of the Storm Water Permit ("1997 NOI"). The 1997 NOI identifies the same owners/operators and the same name and address for the Facility as the 1992 NOI, but lists the WDID# as 4B19S007120. The 1997 NOI does not indicate the Facility acreage or imperviousness. On June 18, 2015, the Facility Owners and/or Operators submitted an NOI to continue coverage for the Facility under the 2015 version of the Permit ("2015 NOI"). The 2015 NOI identifies the

same owners/operators and the same name and address for the Facility as the 1992 NOI and the 1997 NOI; however, the 2015 NOI lists the Facility as 2.61 acres in size and zero percent impervious.<sup>4</sup> The 2015 NOI lists the WDID# as 4 19I007120.

Based on the differing Facility size in the 2015 NOI, Coastkeeper believes that Associated and/or Lebata acquired additional parcels after initially filing its NOI in 1992, but before filing the 2015 NOI. Based upon this information, portions of the Associated Facility were operating without proper Permit coverage until 2015 when the updated NOI was filed.

Information available to Coastkeeper indicates that the Associated Facility is comprised of three parcels: Assessor's ID Nos. 6129-019-058, 6129-019-059, and 6129-019-060. The total acreage of the three parcels is approximately 2.62 acres.

The NOI lists the Standard Industrial Classification ("SIC") code for the Associated Facility as 3273 (ready-mixed concrete). SIC code 3273 facilities must obtain Storm Water Permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2. Information available to Coastkeeper, including the Facility SWPPP describing vehicle and equipment maintenance and storage at the Facility, indicates that SIC code 4231 (terminal and joint terminal maintenance facilities for motor freight transportation) and/or 4212 (local trucking without storage) also apply to the Facility.

#### **1.4. Storm Water Pollution and the Waters Receiving Facility's Discharges**

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Associated Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Polluted discharges from concrete mixing facilities such as the Associated Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS"); nitrite plus nitrate ("N+N"); benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; total kjehldahl nitrogen ("TKN"); trash; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Health & Saf. Code §§ 25249.5 - 25249.1. Discharges of polluted storm water to the Dominguez Channel pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

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<sup>4</sup> Information available to Coastkeeper, including Associated's most recent SWPPP indicates that the site is 100% impervious. The NOI's description of the site as zero percent impervious is inconsistent with the SWPPP.

The Associated Facility discharges into the Dominguez Channel, a tributary of the Los Angeles – Long Beach Harbor and ultimately the Pacific Ocean (“Receiving Waters”). These waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special biological significance that the Receiving Waters have, and consequently impairs recreational and aesthetic opportunities, such as wildlife observation by persons using the well-maintained bike path that runs along the Dominguez Channel, and use of public beaches within the Los Angeles – Long Beach Harbor area.

The California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) issued the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (“Basin Plan”). The Basin Plan identifies the “Beneficial Uses” of water bodies in the region. The Beneficial Uses for the Dominguez Channel downstream of the point at which it receives storm water discharges from the Associated Facility include: Commercial and Sport Fishing; Wildlife Habitat; Estuarine Habitat; Marine Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; and Spawning, Reproduction, and/or Early Development Habitat. *See* Basin Plan at Table 2-1. The Dominguez Channel also has a Potential Beneficial Use as Municipal and Domestic Water Supply, including drinking water supply. *See id.* The Beneficial Uses of the Los Angeles – Long Beach Harbor are: Navigation; Commercial and Sport Fishing; Wildlife Habitat; Estuarine Habitat; Marine Habitat; and Rare, Threatened, or Endangered Species Habitat. *See id.*

According to the 2012 303(d) List of Impaired Water Bodies, the Dominguez Channel is impaired for ammonia, lead, and zinc.<sup>5</sup> The Los Angeles – Long Beach Harbor is impaired for benzoprene, chrysene, copper, DDT, PCBs, sediment toxicity, and zinc.<sup>6</sup> Polluted discharges from industrial sites, such as the Associated Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife.

## **2. THE ASSOCIATED FACILITY AND RELATED DISCHARGES OF POLLUTANTS**

### **2.1. The Associated Facility Site Description and Industrial Activities**

The Associated Facility is a concrete mixing facility that produces ready-mixed concrete. Concrete is produced by mixing aggregate (sand, gravel, or crushed stone), cement (a fine powder), fly ash, chemical additives, and water. Information available to Coastkeeper indicates that the Facility is located at 100 Redondo Beach Boulevard, Gardena, California 90248, which is across the street from another concrete batch plant owned and operated by Associated and/or Lebara. The two facilities operate under separate permits. However, information available to Coastkeeper indicates that the neighboring facilities are used together in the concrete manufacturing and/or recycling

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<sup>5</sup> 2012 Integrated Report – All Assessed Waters, available at [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2012.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml) (last accessed on December 15, 2016.)

<sup>6</sup> *Id.*

process, including the practice of taking sand and concrete pieces from the Facility to the facility located at 134 Redondo Beach Boulevard to air dry and then be removed.

Information available to Coastkeeper indicates that the Facility has several unidentified buildings, a large uncovered parking lot and storage area for concrete trucks, heavy equipment that moves aggregate around the site, cement storage silos, storage of fly ash, and storage for admixture.

A portion of the Facility dedicated to raw material storage or stockpiling, a second portion is dedicated to office space, employee parking, and loading/unloading of mixed concrete, and another portion is dedicated to storage of trucks and other equipment. The Associated Facility's industrial activities include, but are not limited to: maintaining concrete transport vehicles and other Facility vehicles and equipment; storage of hazardous materials, such as diesel fuel, new vehicle fluids, and hazardous waste vehicle fluids; concrete truck parking; unloading of sand and gravel; storage of sand and gravel; storage of cement; storage of chemical additives; storage of fly ash and cement; weighing sand, gravel, cement, and lime; cement mixing; mixing appropriate amounts of sand, gravel, and cement; storage of process water; and storage of vehicle wash-water.

The Associated Facility also includes the following: several outdoor storage piles of aggregate and ready-mixed concrete that are stored in two-walled, unroofed areas; conveyor belts; elevated bins; and hoppers.

## **2.2. Pollutants and Pollutant Sources Related to Associated's Industrial Activities**

The areas of industrial activity at the Facility are sources of pollution. The pollutants associated with industrial activities at the Facility include, but are not limited to: pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; COD; BOD; TSS; N+N; benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; TKN; trash; and O&G.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources and contaminated discharges. BMPs are necessary at the Associated Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. Consequently, during rain events storm water carries pollutants from the Facility's stockpile or material storage area(s), truck parking area(s), maintenance area(s), add-mix area(s), batch plant area(s), washing area(s), and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

Information available to Coastkeeper also indicates that concrete, particulates of sand, gravel, and cement have been and continue to be tracked from vehicle maintenance and equipment washing areas throughout the Facility. These pollutants accumulate at the sand and gravel storage areas and near the silos, the loading and unloading areas, and the driveways leading onto S. Main Street. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, oil and gas, metal particles, and other pollutants off site.

Information available to Coastkeeper indicates that raw materials are stored outside and weighing and mixing activities occur outside without adequate cover or containment resulting in discharges of polluted storm water. Additionally, metal parts and hazardous materials associated with maintenance, fueling, and washing of the concrete trucks occur outside without secondary containment or other measures to prevent polluted storm water and prohibited non-storm water discharges from discharging from the Associated Facility. These activities are all significant pollutant sources at the Facility. The Facility Owners and/or Operators' failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act.

These illegal discharges of polluted storm and non-storm water negatively impact Coastkeeper's members' use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and by posing risks to human health and aquatic life.

### **2.3. Associated Facility Storm Water Flow and Discharge Locations**

In the Facility SWPPP, the Facility Owners and/or Operators state that the Facility is considered a single drainage area ("DA 1") and identify one discharge point at the Facility: Sample Point 1 ("SP1"). The Facility SWPPP states that storm water that falls in the area flows to the detention basin at the southwest portion of the Facility. The retention capacity of this detention basin is not provided. The SWPPP states that if storm water discharges from the Facility those discharges will occur from the Facility driveway adjacent to the detention basin.

Based on information available to Coastkeeper, including direct observations, there are potentially two additional discharge locations at the Facility: (1) the driveway from the northeast portion of the Facility onto East Redondo Beach Boulevard, and (2) the driveway from the northwest portion of the Facility onto East Redondo Beach Boulevard. Thus there is at least one (1), and potentially a total of three (3), discharge locations at the Facility.

Storm water discharging from the Facility flows into County of Los Angeles storm drains. After the storm water enters the storm drains it is carried to the Receiving Waters.

## **3. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT**

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper refers to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued, and, as explained below, includes terms that are as stringent as or more stringent than the 1997 Permit. For purposes of this Notice Letter, Coastkeeper refers to the reissued permit as the "2015 Permit." Accordingly, Associated and/or

Lebata are liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect").

### **3.1. Unauthorized Non-Storm Water Discharges from the Associated Facility in Violation of Storm Water Permit Discharge Prohibitions**

Except as authorized by Special Conditions D(1) of the 1997 Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III.B. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B.

Information available to Coastkeeper indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur at the Facility from the Facility's sedimentation watering system and/or when truck washing and cleaning activities occur. The Facility Owners and/or Operators conduct these activities without BMPs to prevent related non-storm water discharges. Non-storm water discharges resulting from dust control and/or washing and cleaning are not from sources that are listed among the authorized non-storm water discharges in Special Conditions and are always prohibited under the Storm Water Permit.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Discharge Prohibitions are violated each time non-storm water is discharged from the Associated Facility. *See* 1997 Permit, Discharge Prohibition D(1); *see also* 2015 Permit, Discharge Prohibition III.B. These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the number and dates of violations when additional information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

### **3.2. Discharges of Polluted Storm Water from the Associated Facility in Violation of Storm Water Permit Effluent Limitations**

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic<sup>7</sup> and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.<sup>8</sup> The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A.

Information available to Coastkeeper, including its review of publicly available information and observations, BMPs that achieve BAT/BCT have not been implemented at the Facility. Consistent with Coastkeeper's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Facility Owners and/or Operators have failed and continue to fail to implement BAT/BCT, as required. Specifically, Facility discharges have exceeded EPA Benchmarks for numerous pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit.<sup>9</sup> The table in Exhibit 1 sets forth the results of sampling at the Facility conducted by Coastkeeper as well as the Facility Owners and/or Operators. The repeated and significant exceedances of EPA Benchmarks as set forth in Exhibit 1 demonstrates that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.,* Exhibit 2 (setting forth dates of rain events resulting in a discharge at the Facility).<sup>10</sup> These discharge violations are ongoing and will continue every time the Facility Owners and/or Operators discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Coastkeeper will update the dates of violations when additional information and data become available. Each time the Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or

<sup>7</sup> Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, benzene, arsenic, lead, and zinc, among others.

<sup>8</sup> Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

<sup>9</sup> *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

<sup>10</sup> Dates of significant rain events are measured at the University of Southern California rain gauge. The oldest data available at this rain gauge is dated August 2012. When older data becomes available, Coastkeeper will add that additional information. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Effluent Limitation V.A. is an independent requirement with which Associated and/or Lebata must comply, and that carrying out the iterative process triggered by exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. Exceedances of the NALs demonstrate that a facility (such as the Facility at issue here) is among the worst performing facilities in the State. However, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

### **3.3. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations**

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").<sup>11</sup> The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, the WQS from the Basin Plan for pH is 6.5-8.5 s.u. On December 23, 2016, storm water discharging from the Facility measured a pH level of 10.89 s.u., 2.39 s.u. above the maximum pH WQS.<sup>12</sup> *See* Ex. 1. Storm

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<sup>11</sup> The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

<sup>12</sup> There are four results for pH on December 23, 2016. For purposes of this Notice Letter, Coastkeeper has used the lowest result.

water discharging from the Facility on December 23 also contained a concentration of copper of 27 µg/L, lead of 10 µg/L, and zinc of 120 µg/L, 7.24, 1.17, and 1.4 times the applicable WQS, respectively. *See* Exhibit 1.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated beneficial uses, for some of the same pollutants discharging from the Facility. The 2012 303(d) List of Impaired Water Bodies lists the Receiving Waters as impaired for multiple pollutants, including ammonia, lead, and zinc. Information available to Coastkeeper indicates that the Facility's storm water discharges contain elevated concentrations of pollutants, such as copper, lead, pH, and zinc, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. *See, e.g.,* Exhibit 1. Further, storm water discharged with high pH can damage the gills and skin of aquatic organisms and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a substance varies as a function of the pH of a solution. A one whole unit change in SU represents a tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic organisms living within it will become stressed or die. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitations.

Coastkeeper puts the Facility Owners and/or Operators on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.,* Exhibit 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS, it is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Receiving Water Limitations are independent Permit requirements with which Associated and/or Leбата must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a water quality standard. Even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

#### **3.4. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan**

The Storm Water Permit Requires permittees to develop and implement Storm Water Pollution Prevention Plans prior to conducting, and in order to continue, industrial activities. The

specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

#### **3.4.1. 1997 Permit SWPPP Requirements**

Section A(1) and Provision E(2) of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the 1997 Permit SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (see 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (see 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (see 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

#### **3.4.2. 2015 Permit SWPPP Requirements**

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of

discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutant control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Section X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

#### **3.4.3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit SWPPP Requirements**

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, Appendix A of the SWPPP dated August 4, 2016, does not include a Facility site map as stated in SWPPP Section 4.1. The Facility SWPPP thus fails to include a site map, as required by the Storm Water Permit. And the site map included in the SWPPP dated June 29, 2015, fails to include an accurate depiction of the discharge locations, the location of the storm water collection system and municipal storm drains, or areas of actual and potential pollutant contact, including the extent of pollution-generating activities.

Further, Table 1, Table 3, and Table 4 of the SWPPP fail to identify all significant materials and potential pollutants at the Facility. The SWPPP fails to identify BMPs that prevent or reduce the discharge of pollutants at the Facility achievable through implementation of BAT/BCT, as at Section 7.0 of the SWPPP the Facility Owners and/or Operators summarily conclude that minimum BMPs are adequate despite high concentrations of pollutants discharging from the Facility and at Section 8.0 of the SWPPP adequate BMPs are not described. Nor are needed revisions described in SWPPP Section 8.0.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise a SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous

violation of the Storm Water Permit SWPPP requirements since at least February 2, 2012. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

### **3.5. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program**

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 1997 and 2015 Permit are set out below.

#### **3.5.1. 1997 Permit M&RP Requirements**

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

The Facility was and/or is a member of the Building Materials Industry Group Monitoring Program, and thus the Facility Owners and/or Operators must comply with the group monitoring provisions set forth in Section B(15) of the 1997 Permit. Under Section B(15) of the 1997 Permit, the Facility Owners and/or Operators must collect at least two (2) samples from each discharge point at the Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15). Storm water samples must be analyzed for TSS, pH, specific conductance ("SC"), total

organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities, such as aluminum and nitrate plus nitrite. *See* Storm Water Permit, Section B(5)(c). The 1997 Permit requires facilities classified as SIC code 3273, such as the Facility, to also analyze storm water samples for iron. *See* 1997 Permit, Table D, Sector E.

### **3.5.2. 2015 Permit M&RP Requirements**

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency to the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

As an *increase* in sampling frequency to the 1997 Permit, Section XI(B)(1-5) of the 2015 Permit requires permittees participating in a group monitoring plan, such as the Facility Owners and/or Operators, to collect storm water discharge samples from a qualifying storm event<sup>13</sup> as follows: 1) from each discharge location, 2) from one storm event within the first half of each reporting year<sup>14</sup> (July 1 to December 31), 3) from one storm event within the second half of each reporting year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit *all sampling* and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event. Emphasis added.

The parameters to be analyzed are also consistent with the 1997 Permit, however, the 2015 Permit no longer requires SC to be sampled. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c)-(d) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial activities. Table 1 of the 2015 Permit specifically requires SIC Code 3273 facilities, such as the Associated Facility, to analyze for iron. Section XI(B)(6)(e) of the 2015 Permit also requires

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<sup>13</sup> The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

<sup>14</sup> A reporting year is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads ("TMDL"). There is an approved TMDL for the Receiving Waters—the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL. Accordingly, Section XI(B)(6)(e) of the 2015 Permit requires that the Facility Owners and/or Operators also analyze samples for copper, lead, and zinc.

**3.5.3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit M&RP Requirements**

The Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Facility Owners and/or Operators have failed and continue to fail to conduct all required quarterly and/or monthly visual observations of unauthorized discharges. *See* 1997 Permit, Section B(3); *see also* 2015 Permit, Section XI(A)(1). Additionally, the Facility Owners and/or Operators have failed to conduct, and/or provide the records required by the Storm Water Permit for, the monthly visual observations of storm water discharges in violation of Section B(4) of the 1997 Permit and Section XI(A)(3) of the 2015 Permit.

Further, the Facility Owners and/or Operators have failed and continue to fail to develop an M&RP that requires the Facility Owners and/or Operators to analyze storm water discharges from the Facility for all required parameters by failing to specify that storm water discharges will be analyzed for, at a minimum, lead, zinc, copper, COD, N+N, and BOD, in violation of Section B(5)(c) of the 1997 Permit and Section XI(B)(6)(e) of the 2015 Permit. In fact, the most recent, publicly available SWPPP for the Facility certified on August 4, 2016, acknowledges that the receiving water is impaired for lead, and that lead is present at the Facility, but fails to require sampling for lead. Dischargers are required to sample for pollutants known to be present at their facility if the receiving water is impaired, among other sampling requirements. *See* 2015 Permit Sec. XI(B)(6). And the Facility Owners and/or Operators have failed and continue to fail to implement the M&RP by failing to analyze storm water discharge samples for all pollutants listed in the M&RP, such as pH.

The Facility Owners and/or Operators have also failed and continue to fail to develop an M&RP that requires the Facility Owner and/or Operator to collect storm water samples from all discharge locations at the Facility from all storm water discharges occurring during qualifying storm events, as required and as described in more detail below.

Based on information available to Coastkeeper, the Facility Owners and/or Operators have not developed and implemented an adequate training program for Facility employees and/or contractors responsible for collecting storm water samples, as required by the Storm Water Permit. For example, the samples collected on September 15, 2015, had multiple chain of custody errors. The samples collected on January 5, 2016, had labeling problems by failing to include the sample ID, the sample time, or preservation.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise an M&RP, in violation of M&RP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised M&RP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit M&RP requirements since at least February 2, 2012. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

### **3.6. Failure to Comply with the Storm Water Permit's Reporting Requirements**

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit also includes an annual reporting requirement. *See* 2015 Permit, Section XVI.

The Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2011-2012 Annual Report, the Facility Owners and/or Operators certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Coastkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above EPA benchmarks, thus demonstrating that the Facility BMPs do not adequately address existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Facility Owners and/or Operators have also submitted incomplete Annual Reports. For instance, since the filing of the 2011-2012 Annual Reports, the Facility Owners and/or Operators have failed to properly report required sampling and/or observations. For example, in the 2011-2012 Annual Report, the Facility Owners and/or Operators report that samples were collected from one storm event, but no sampling results are provided with the report, as required. Additionally, monthly visual observation forms submitted with the Facility Annual Reports indicate only that there was no eligible event and do not include any substantive observations, as required. Specifically, in the 2013-2014 Annual Report, as the reason no samples were collected, the Facility Owners and/or Operators state that the Facility does not operate during rain events due to the fact that rain is harmful to wet concrete, and jobs are canceled when rain is forecasted. Not only does information available to Coastkeeper, including direct observations, demonstrate that the Facility does operate during storm events, the 1997 Permit and the 2015 Permit do not excuse failures to collect required

samples on this basis. Furthermore, the SWPPP states that the operating hours are 6:00 a.m. to 4:00 p.m. Monday through Friday, and the Facility may operate on evenings, nights, and weekends for large public works projects. The SWPPP does not state that the Facility closes for rain events.

Further, the 2014-2015 Annual Report is incomplete. For example, states that no samples were collected because no storm event producing storm water runoff occurred during operating hours. Based on information available to Coastkeeper, there were at least seven (7) qualifying storm events that occurred during operating hours during the 2014-2015 reporting year.<sup>15</sup> See Exh. 2. The 2014-2015 Annual Report is also missing pages 2 and 6, and page 3 is not filled out. The absence of page 6 indicates that the Facility Owners and/or Operators did not report whether the Facility is in compliance with the Permit or whether the Facility Owners and/or Operators reviewed the SWPPP. Nor have the Facility Owners and/or Operators reported the analytical results of *all samples* collected during the 2015-2016 reporting year in violation of Section XI(B)(11)(a) of the 2015 Permit. The Facility Owners and/or Operators collected four samples from a single sampling point on September 15, 2015, but the data summary report included in the Annual Report does not include all results for the parameters analyzed. The plain language of the Permit requires submission of "all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event." 2015 Permit, Section XI(B)(11)(a). Dischargers are not permitted to cherry-pick which results to report to SMARTS.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 Permit, Section C(11)(d). The Facility Owners and/or Operators have not reported non-compliance, as required.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least February 2, 2012. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

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<sup>15</sup> For example, as is shown in Exhibit 2 it rained 1.41 inches on Tuesday, January 5, 2016. The Facility Owners and/or Operators collected storm water samples from the Facility during that January 5 rain event. On Friday, December 12, 2014, it rained 1.58 inches. Accordingly, it is likely that the December 12 rain produced a discharge from the Facility.

### **3.7. Failure to Comply with Level 1 Exceedance Response Action Requirements**

When the 2015 Permit became effective on July 1, 2015, all permittees were in "Baseline status." *See* 2015 Permit, Section XII(B). A permittee's Baseline status for any given parameter changes to "Level 1 status" if sampling results indicate an NAL exceedance for that same parameter. *See* 2015 Permit, Section XII(C). Level 1 status commences on July 1 following the reporting year during which the exceedance(s) occurred. *See* 2015 Permit, Section XII(C). By October 1 following commencement of Level 1 status, permittees are required to: complete an evaluation, with the assistance of a QISP, of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s); and identify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of Storm Water Permit. *See* 2015 Permit, Section XII(C)(1)(a)-(c). Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated. *See* 2015 Permit, Section XII(C)(1)(c).

Based upon this Level 1 status evaluation, the permittee is required to, as soon as practicable but no later than January 1 following commencement of Level 1 status, revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation, certify and submit via SMARTS a Level 1 ERA Report prepared by a QISP that includes the a summary of the Level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. *See* 2015 Permit, Section XII(C)(2)(a)(i)-(ii). The permittee in Level 1 status must also certify and submit via SMARTS the QISP's identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status. *See* 2015 Permit, Section XII(C)(2)(a)(iii). A permittee's Level 1 status for a parameter will return to Baseline status once a Level 1 ERA report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. *See* 2015 Permit, Section XII(C)(2)(b).

The Facility Owners and/or Operators are in Level 1 status for iron based on NAL exceedances during the 2015-2016 reporting year. Specifically, the annual average for iron during the 2015-2016 reporting year was 5.754 mg/L—5 times over the annual NAL for iron of 1 mg/L. The compliance group in which the Facility Owners and/or Operators are members submitted a report titled: "Consolidated Exceedance Response Action Level 1 Report BMI Ready Mixed Concrete Group (#241)" dated November 30, 2016 ("Consolidated Report"). The Consolidated Report states facilities in the compliance group with annual iron averages above 5.0 mg/L are "discussed in greater detail." *See* Consolidated Report, pp. 16-17. Though the annual average concentration of iron in storm water discharges from the Facility was 5.754 mg/L—above 5.0 mg/L—the Facility is not addressed in detail in the Consolidated Report. *See id.*

In any event, the Consolidated Report is inadequate. For example, rather than conducting an evaluation to identify the BMPs in the SWPPP at the Facility that correspond to the iron NAL exceedance at the Facility, the Consolidated Report states that the annual average NAL for iron is too low, and recommends no additional or improved BMPs to specifically address iron NAL exceedances at the Facility. *See* Consolidated Report, pp. 15-17. The Consolidated Report does cite

sweeping as existing BMPs for iron at the compliance group facilities. *See* Consolidated Report, pp. 15-18. However, the Facility SWPPP expressly identifies sweeping as a BMP that is not effective at addressing iron: "Two pollutants that are difficult to control are pH and Iron. Both of these are present in cement. Cement dust is very fine and it is difficult to sweep it up to a level that does not adversely impact storm water." *See* Facility SWPPP, Section 7.0 (Assessment of Potential Pollutant Sources). Nor did the "screening experiment" cited in the Consolidated Report evaluate cement dust as a source of iron. *See* Consolidated Report, pp. 15-18. Accordingly, the Consolidated Report in no way meets the requirements of Section XII(C) of the 2015 Permit.

The Facility Owners and/or Operators have failed and continue to fail to conduct a Level 1 status evaluation and submit a Level 1 ERA Report, and/or have conducted an inadequate Level 1 status evaluation and submitted an inadequate Level 1 ERA Report that fails to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without a Level 1 status evaluation and/or a Level 1 ERA Report, and/or an adequate Level 1 status evaluation and/or an adequate Level 1 ERA Report, as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's Level 1 status ERA requirements every day since at least July 1, 2016. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

#### **4. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009 and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

#### **5. CONCLUSION**

Coastkeeper is willing to discuss effective remedies for the violations described in this

Notice of Violation and Intent to File Suit

February 2, 2017

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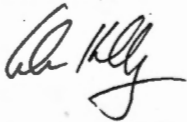
Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Associated's and/or Lebata's violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Coastkeeper's legal counsel:

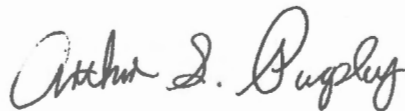
Caroline Koch  
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Lawyers for Clean Water, Inc.  
1004A O'Reilly Avenue  
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Orange County Coastkeeper  
ATTN: Colin A. Kelly  
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Tel: (714) 850-1965 ext. 307

Sincerely,



Colin Kelly  
Senior Staff Attorney  
Orange County Coastkeeper



Arthur Pugsley  
Senior Attorney  
Los Angeles Waterkeeper

## SERVICE LIST

### VIA U.S. MAIL

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Thomas Howard  
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Sacramento, California 95812

**Exhibit 1**

Sample collected by Coastkeeper (C) or Discharger (D)	Date of sample collection	Sample Location	Parameter	Result	Units	Benchmark	Magnitude of Benchmark Exceedance	California Toxics Rule Criteria/WQO	Magnitude of CTR/WQO Exceedance
2011-2012 WET SEASON									
No samples collected									
2012-2013 WET SEASON									
No samples collected									
2013-2014 WET SEASON									
No samples collected									
2014-2015 WET SEASON									
No samples collected									
2015-2016 Reporting Year									
D	9/15/16 6:35	SP1	Iron	2.26	mg/L	1	2.26	none	n/a
D	9/15/16 6:35	SP1	Iron	7.23	mg/L	1	7.23	none	n/a
D	9/15/16 6:35	SP1	Iron	7.29	mg/L	1	7.29	none	n/a
D	9/15/16 6:35	SP1	Iron	4.87	mg/L	1	4.87	none	n/a
D	9/15/16 6:35	SP1	Oil & Grease	4.1	mg/L	15	0.273333333	none	n/a
D	9/15/16 6:35	SP1	Total Suspended Solids (TSS)	42.2	mg/L	100	0.422	none	n/a
D	9/15/16 6:35	SP1	Total Suspended Solids (TSS)	143	mg/L	100	1.43	none	n/a
D	9/15/16 6:35	SP1	pH	9	SU	6.0-9.0	n/a	6.5-8.5	0.5
D	1/5/16 0:00	SP1	Total Suspended Solids (TSS)	190	mg/L	100	1.9	none	n/a
D	1/5/16 0:00	SP1	Oil & Grease	4.93	mg/L	15	0.328666667	none	n/a
D	1/5/16 0:00	SP1	Iron	7.12	mg/L	1	7.12	none	n/a
2016-2017 Reporting Year									
C	12/23/16 0:00	SP1	Copper	27	ug/L	9	3	3.73	7.238605898
C	12/23/16 0:00	SP1	Lead	10	ug/L	45	0.222222222	8.52	1.17370892
C	12/23/16 0:00	SP1	Zinc	120	ug/L	80	1.5	85.6	1.401869159
C	12/23/16 0:00	SP1	Nitrate Plus Nitrite (as N)	1.1	mg/L	0.68	1.617647059	none	n/a
C	12/23/16 0:00	SP1	Aluminum	15	mg/L	0.75	20	none	n/a
C	12/23/16 0:00	SP1	Oil & Grease	ND	mg/L	15	n/a	none	n/a
C	12/23/16 0:00	SP1	Chemical Oxygen Demand	110	mg/L	120	0.916666667	none	n/a
C	12/23/16 0:00	SP1	pH*	10.89	SU	6.0-9.0	1.89 above range	6.5-8.5	2.39 above range
C	12/23/16 0:00	SP1	Biochemical Oxygen Demand	27	mg/L	30	0.9	none	n/a
C	12/23/16 0:00	SP1	Total Suspended Solids (TSS)	410	mg/L	100	4.1	none	n/a
						<b>Total Exceedances</b>	<b>13</b>		<b>5</b>
*There are four pH results for 12/23/16. For purposes of this Notice Letter, Coastkeeper has used the lowest result.									

**Exhibit 2**

**Dates of Significant Rain Events Measured at  
University of Southern California Rain Gauge**

<b>Date</b>	<b>Day of Week</b>	<b>Rain</b>
11/18/12	Sunday	0.26
11/29/12	Thursday	0.25
11/30/12	Friday	0.47
12/3/12	Monday	0.28
12/18/12	Tuesday	0.51
12/24/12	Monday	0.5
12/26/12	Wednesday	0.35
12/29/12	Saturday	0.45
1/24/13	Thursday	0.82
1/25/13	Friday	0.13
2/20/13	Wednesday	0.18
3/8/13	Friday	0.51
5/6/13	Monday	0.72
11/21/13	Thursday	0.34
11/29/13	Friday	0.23
12/19/13	Thursday	0.11
2/3/14	Monday	0.14
2/27/14	Thursday	0.81
2/28/14	Friday	2.28
3/1/14	Saturday	0.75
3/2/14	Sunday	0.43
4/2/14	Wednesday	0.2
11/1/14	Saturday	0.43
12/1/14	Monday	0.28
12/2/14	Tuesday	1.02
12/3/14	Wednesday	0.33
12/4/14	Thursday	0.17
12/12/14	Friday	1.58
12/16/14	Tuesday	0.32
12/17/14	Wednesday	0.25
12/31/14	Wednesday	0.12
1/11/15	Sunday	0.94
2/23/15	Monday	0.61

Date	Day of Week	Rain
3/1/15	Sunday	0.11
3/2/15	Monday	0.8
4/8/15	Wednesday	0.13
5/8/15	Friday	0.21
5/14/15	Thursday	0.16
5/15/15	Friday	0.56
7/18/15	Saturday	0.25
9/15/15	Tuesday	2.39
10/6/15	Tuesday	0.36
12/14/15	Monday	0.16
12/20/15	Sunday	0.26
1/5/16	Tuesday	1.41
1/6/16	Wednesday	0.63
1/7/16	Thursday	0.32
1/31/16	Sunday	0.43
2/18/16	Thursday	0.67
3/6/16	Sunday	0.65
3/7/16	Monday	0.38
3/11/16	Friday	0.45
4/8/16	Friday	0.15
10/17/16	Monday	0.33
10/24/16	Monday	0.14
11/20/16	Sunday	0.1
11/21/16	Monday	0.65
11/26/16	Saturday	0.12
12/16/16	Friday	1.58
12/22/16	Thursday	0.73
12/24/16	Saturday	1.54
12/30/16	Friday	0.18
12/31/16	Saturday	0.26

<b>Date</b>	<b>Day of Week</b>	<b>Rain</b>
1/5/17	Thursday	0.42
1/9/17	Monday	0.77
1/11/17	Wednesday	0.38
1/12/17	Thursday	1.12
1/19/17	Thursday	0.98
1/20/17	Friday	1.07
1/22/17	Sunday	1.7
1/23/17	Monday	0.87
	<b>Total Days of Violation</b>	<b>71</b>